

**REMARKS**

Claims 10 to 18 are now pending.

Applicant respectfully requests reconsideration of the present application in view of this response.

With respect to paragraph two (2) of the Final Office Action, claims 10 to 13, and 16 were rejected under 35 U.S.C. § 102(b) as anticipated by Andre et al., Patent No. DE 19822184.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 10 has been rewritten to provide that *the vertical distance measuring device measures only in a substantially vertical direction away from a vehicle underside*. Support for this claim feature may be found in the Substitute Specification, e.g. at page 1, lines 10 to 11; page 4, lines 12 to 14; and page 5, lines 2 to 3.

As to the "Andre" reference, Figure 1 indicates a spacer sensor that measures horizontal distances, as well as vertical distances toward the vehicle underside. This arrangement wholly differs from the presently claimed subject matter since the sensor does not measure only in a substantially vertical direction away from a vehicle underside, as

provided for in the context of the presently claimed subject matter of claim 10, as presented. Therefore, the "Andre" reference does not identically disclose (or even suggest) the feature in which the vertical distance measuring device measures only in a substantially vertical direction away from a vehicle underside, as provided for in the context of claim 10, as presented.

Accordingly, claim 10, as presented, is allowable, as are its dependent claims 11 to 13, and 16. It is therefore respectfully requested that the anticipation rejections be withdrawn.

With respect to paragraph four (4) of the Final Office Action, claims 14, 15, and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over the "Andre" reference.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 14, 15, and 18 depend from claim 10, as presented, and are therefore allowable for essentially the same reasons as claim 10, as presented.

In addition, as admitted by the Final Office Action at page 3, the "Andre" reference does not disclose (or even suggest) the feature in which the vertical distance measuring device is situated on a bumper, nor that the vertical distance measuring device is situated on a rear bumper, as provided for in the context of claims 14 and 18, as presented. Further, as admitted by the Final Office Action at page 3, the "Andre" reference does not disclose (or even suggest) the feature in which the at least one vertical distance measuring device includes four vertical distance measuring devices for carrying out distance measurements at four locations on the bumper distanced from one another, as provided for in the context of claim 15, as presented.

Accordingly, claims 14, 15, and 18 are allowable for at least the above reasons.

With respect to paragraph five (5) of the Final Office Action, claim 17 was rejected under 35 U.S.C. § 103(a) as unpatentable over the "Andre" reference as applied to claim 10 in view of Cho, U.S. Patent No. 6,408,237.

Claim 17 depends from claim 10, as presented, and is therefore allowable for at least the same reasons as claim 10, as presented, since the secondary "Cho" reference does not cure -- and is not asserted to cure -- the critical deficiencies of the principal reference. Specifically, the "Cho" reference does not disclose (or even suggest) that the vertical distance measuring device measures only in a substantially vertical direction away from a vehicle underside, as provided for in the context of claim 10, as presented.

Accordingly, claim 17 is allowable for at least the above reasons.

Withdrawal of these obviousness rejections is therefore respectfully requested.

In sum, claims 10 to 18 are allowable for at least the above reasons.

#### Conclusion

It is therefore respectfully submitted that all of claims 10 to 18 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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